

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	July 14, 2004
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
)	Reply Comments
To: The Commission)	

VIA the ECFS

REPLY COMMENTS OF FRANCOIS D. MENARD

I respectfully submit the following reply comments in the above-captioned Proceeding (“the NPRM”).

These reply comments were developed by a Canadian citizen who observes that regulatory roadmap of the FCC is becoming incomprehensibly so empty compared to that of the Canadian CRTC that the FCC may in fact be contravening Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 as it would fail to implement key dispositions of the North American Free Trade Agreement (NAFTA) and of the World Trade Organization Basic Telecommunications Service Agreement (WTO BTSA).

The FCC is required to ensure that the dispositions of the NAFTA and of the WTO BTSA which requires the opportunity of Canadian companies to resell service and to interconnect with existing networks at reasonable rates, terms and condition.

Would the FCC proceed to implement its NPRM refrain from subjecting to economic regulation the facilities owned by US ILECs and US incumbent cable carriers (which jointly possess well over 95% of the market share in the provision of residential wireline basic

telecommunications services), would result in the FCC put the United States of America in a position of being unable to implement key dispositions of NAFTA and WTO BTSA.

Since Voice over IP over broadband facilities is a practical substitute for PSTN voice, the obligations under NAFTA and the WTO BTSA do apply.

INTRODUCTION

1. During the same time the FCC is considering deregulating IP-enabled services, the Canadian Radio-Television and Telecommunications Commission has identified on its 2004-2007 plan¹ the following objectives related to its telecommunications regulations activities:

- Objective #1: Increased access to a variety of innovative, high-quality communications services, at reasonable prices that meets consumers' needs and reflect their values:
- Objective #2: A sustainable competitive Canadian communications industry
- Objective #3: Commission processes that are fair, transparent and effective

2. Under Objective #2, the CRTC identifies prioritizing for resolution in 2004, several key issues found to be the source of delays in the venue of sustainable competition in local telecommunications, namely:

Under ILEC/Incumbent Wholesale and Access Issues:

- Gateway Access Service and High Speed Access
- CDNA Service (PN 2002-4)
- Ethernet interim regime
- ADSL interim regime
- Finalize third party cable modem interconnection rates
- Interconnection Decision (PN 2001-126)

3. On the same day than these reply comments are due, the CRTC has issued Decision 2004- 46² relating to PN 2001-126 in which it reduces the number of POIs between LECs to 337 for the entire country of Canada to facilitate competitive entry. It is clear that the mandating of IP-based interconnections rather than considering the forbearance of IP-enabled Services should be the focus of the FCC in this proceeding.

¹ <http://www.crtc.gc.ca/eng/BACKGRND/plan2004.htm>

² <http://www.crtc.gc.ca/archive/ENG/Decisions/2004/dt2004-46.htm>

CONCLUSION

4. It is improper for the Commission to use the vehicle of a NPRM to bypass statutory obligations imposed on the Commission in Section 10 of the 1996 Telecommunications Act. De-regulating IP-enabled services, with no regards to the underlying infrastructure on which they ride, would not be in the public interest. It would be tantamount to the re-monopolization of broadband. Internet Service Providers which do not have a market power equal to that of the than incumbent carriers would be condemned to systematically close their doors the day that their dial-up revenues are no longer sufficient to keep them financially afloat.
5. It is necessary for the SBA to step-in and ensure that the Commission does not attempt to short circuit the judicial review of the 02-33 and 02-52 NPRMs by way of another round of service re-classification that are not supported by current judicial review.
6. At the very minimum, the SBA should direct the Commission to revise its IRFA to list the significant alternatives at its disposition to ensure that non-affiliated regional Internet Service Providers will not be condemned to bankruptcy as a direct result of the proposed rulemaking in the NPRM.
7. I urge the Commission and the SBA to pay close attention to the very limited scope of CRTC Public Notice 2004-2 and the sharply contrasting preliminary positions of CRTC Commissioners to those of the FCC. I further invite the FCC and the SBA to pay closer attention to the CRTC Public Record surrounding the continued economic regulation of Canadian ILEC wireline broadband and Canadian incumbent MSO broadband offerings within the context of forbearance of retail rates for broadband Internet access in Canada.

8. Would the FCC proceed to implement its NPRM refrain from subjecting to economic regulation the facilities owned by US ILECs and US incumbent cable carriers (which jointly possess well over 95% of the market share in the provision of residential wireline basic telecommunications services), would result in the FCC put the United States of America in a position of being unable to implement key dispositions of NAFTA and WTO BTSA.

9. Since Voice over IP over broadband facilities is a practical substitute for PSTN voice, the obligations under NAFTA and the WTO BTSA do apply. This requires the FCC to subject IP-enabled services to economic regulation when they are provided by US ILECs and US incumbent cable carriers.

Respectfully submitted,

/s/

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